



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/02172/2020 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC
On 9 March 2021

Decision & Reasons Promulgated
On 11 March 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IA

(ANONYMITY ORDER MADE)

Respondent

DECISION AND REASONS

For the appellant: Mr A McVeety, Senior Presenting Officer

For the Respondent: No attendance

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I indicated my decision but reserved my full reasons, which I now give. The order made is described at the end of these reasons.

1. To avoid confusion, for the purpose of this decision I have referred below to the parties as they were before the First-tier Tribunal.
2. The appellant's instructed counsel, Mr C Holmes was not able to attend the remote hearing but sent an email in which he explained that the parties were in agreement as to the error of law and that the outcome should be to set aside the decision on asylum grounds but to allow the appeal on Humanitarian Protection grounds. Mr McVeety had also seen the email and agreed with the course of action proposed. In the premises, it was not necessary to continue the remote hearing.
3. The appellant is an Iraqi national of Kurdish ethnicity and Sunni Muslim religion, with date of birth given as 1.3.91. He arrived in the UK clandestinely in 2007 and claimed asylum. That claim was refused by the respondent, as were a number of subsequent Further Submissions. Appeals were dismissed by the First-tier Tribunal in 2007 and again in 2010.
4. The Secretary of State has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 28.9.20 (Judge Raikes), allowing on both asylum and humanitarian protection grounds the appellant's appeal against the decision of the Secretary of State, dated 3.2.20, to refuse his claim for international protection made in the latest Further Submissions of 19.11.19, which submissions relied on the grounds of general poor security situation in Iraq and the absence of identity documentation.
5. At the First-tier Tribunal, the appellant made it clear that he did not pursue the asylum claim twice previously rejected by the Tribunal that he was at risk because of his father's claimed membership of the Ba'ath Party. The appellant's case was advanced solely on Humanitarian Protection grounds and associated ECHR breaches which would ensue from his return to Iraq at Baghdad Airport without a CSID or other identity document enabling him to transit to his home area of the Hawija District, which lies within the Kirkuk Province. In essence, it was asserted that the appellant faced a real risk of destitution on return to Iraq.
6. In summary, the grounds argue that the First-tier Tribunal Judge erred in law in allowing the appeal under both the Refugee Convention (asylum) and Humanitarian Protection grounds. It is pointed out that to allow an appeal on Humanitarian Protection grounds in addition to asylum grounds is superfluous as no further protection would be necessary. The decision is also internally inconsistent in that at [23] the judge found that the appellant would not be at risk on return to his home area, as he has no personal association to ISIL or local or national government. I note that the grounds did not challenge any of the factual findings of the First-tier Tribunal.
7. Permission to appeal to the Upper Tribunal on all grounds was granted by the First-tier Tribunal on 20.10.20, the judge considering it arguable that the judge conflated the appellant's Humanitarian Protection and asylum claims.

8. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal, and Mr Holmes' email. I agree that the decision allowing the appeal on asylum grounds is inconsistent with both the appellant's case and the findings of the First-tier Tribunal. In the premises the decision is in clear error of law. I entirely agree with the view of the two representatives as to the correct course of action.
9. In the premises, the appropriate course of action is to allow the Secretary of State's appeal and set aside the decision of the First-tier Tribunal for material error of law, remaking the decision in the appeal by allowing it on Humanitarian Protection grounds only.

Decision

The appeal of the Secretary of State to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside.

The decision in the appeal is remade by allowing the appeal on Humanitarian Protection grounds but dismissing it on asylum grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 9 March 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

"Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 9 March 2021